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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/872,135 | 05/31/2001 | Brandon James Yoe | 50623.00168 | 1923 |
| 7590 12/29/2004 | | | EXAMINER | |
| CAMERON KERRIGAN SQUIRE,SANDERS & DEMPSEY L.L.P ONE MARITIME PLAZA, SUITE 300 SAN FRANCISCO,, CA 94111-3492 | | | NGUYEN, CAMTU TRAN | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3743 | |

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-----------------------------------|--|
| Office Action Summary | Application No. 09/872,135 | Applicant(s) YOE ET AL. | |
| | Examiner Camtu T. Nguyen | Art Unit 3743 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,5-7,10-32,37-39,41-44,46-50,53-59,61 and 63-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-7,10-32,37-39,41-44,46-50,53-59,61 and 63-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is in response to applicant's amendment filed on September 10, 2004. Claims 1, 3, 37-39, 42, 44, 46, and 53 have been amended. Applicant's comments pertaining to the Fischell et al reference are acknowledged.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5-7, 10-32, 37-39, 41-44, 46-50, 53-59, 61, and 63-85 are rejected under 35 U.S.C. 102(e) as being anticipated by Hossainy et al (U.S. Patent No. 6,764,505). Hossainy et al discloses in Figure 1-9 a stent comprising elements as recited in these claims including a body having a first end and a second end and a middle segment between the first and the second ends, a variable stent surface per unit length of the body wherein the first and the second ends have a lesser surface area than the middle segment, and a drug deposited on the stent so that the first and the second ends have a lesser amount of the drug than the middle segment. The Hossainy et al device would inherently be capable of performing the steps as recited in the claims. Hossainy discloses in column 2 lines 32-39 that the intensity of radiation decreases as the source of the

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radiation, the radioactive stent, terminates at its ends leading to a drop of in radiation levels at vessel portions adjacent its ends. Thus, the Hossainy stent, would inherently include a non-therapeutic level of radioactivity at its ends.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hossainy et al (U.S. Patent No. 6,764,505). Hossainy et al discloses in Figure 1-9 a stent comprising elements as recited in these claims but does not teach the dose of the radioactivity comprises up to 60 Gray. Turnlund et al teaches in paragraph [0043] a dose of radiation of between 1 Gy and about 50 Gy. Therefore it would have been obvious to one skilled in the art to use the Hossainy et al's stent having an amount radiation dose of radiation as suggested by Turnlund et al as such has been shown to induce thrombus formation along the interior surface, which is the initial step towards endothelialization for the lumen interior surface, proliferative cellular healing can commence.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Camtu T. Nguyen whose telephone number is 703-305-0537.

The examiner can normally be reached on (M-F) 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Camtu Nguyen
December 27, 2004



Henry Bennett
Supervisor Patent Examiner
Group 3700